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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

CHRISTY BRYANT, Plaintiff, v. AZIYO BIOLOGICS, INC., a foreign corporation; MEDTRONIC, INC; and MEDTRONIC USA, INC. Defendants.	Case No. COMPLAINT FOR DEFECTIVE PRODUCT JURY TRIAL DEMANDED

Plaintiff alleges:

1.

Federal jurisdiction is based upon diversity of citizenship, 28 U.S. Code § 1332 and the following facts:

a. The amount in controversy is more than $75,000.

b. Plaintiff resides in Oregon.

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c. Defendant Aziyo Biologics, Inc., a corporation headquartered in Maryland, does business in Oregon.

d. Defendant Medtronic, Inc., a corporation headquartered in Minnesota, does business in Oregon.

e. Defendant Medtronic USA, Inc., a corporation headquartered in Minnesota, does business in Oregon.

Plaintiff demands a jury trial.

2.

On March 17, 2021, plaintiff submitted to an anterior cervical discectomy and fusion (ACDF) to correct numbness and tingling in her hands and fingers. During this surgery plaintiff's orthopedic surgeon, Dr. Timothy Uschold, installed a FiberCel™ Viable Bone Matrix (VBM) manufactured by defendant Aziyo Biologics Inc. and distributed by the Medtronic defendants. Unknown to Dr. Uschold and to plaintiff, the VBM was tainted with tuberculosis bacteria, which infected plaintiff with tuberculosis (TB).

3.

On May 24, 2021, Dr. Uschold and Dr. Sean Traynor (an ear, nose, and throat surgeon) jointly performed an "anterior cervical wound exploration, incision, drainage, irrigation and debridement" and an "extended esophagoscopy." These surgeries revealed that while the TB infection had not yet reached the esophagus, it had massively invaded the tissues near the VBM.

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4.

On June 5, 2021, Dr. Uschold performed a third surgery because the TB had caused an epidural phlegmon infection, which had then invaded the spinal nerves and caused spinal stenosis. During this surgery Dr. Uschold used vancomycin powder to combat the infection.

5.

On June 18, 2021, Dr. Uschold performed wound dehiscence, irrigation, and debridement at the surgical sites. In the process he encountered macerated, poorly healed, and necrotic tissue, all caused by the TB infection.

6.

To treat the TB infection that had spread from plaintiff's neck to her lungs and other tissues and organs, plaintiff was hospitalized from May 8 to July 12, 2021, and was also quarantined in airborne isolation. Even with ongoing treatment, plaintiff still suffers the effects of TB and remains forever susceptible to reinfection. She will require ongoing medical monitoring.

7.

Meanwhile, on June 2, 2021, after becoming aware that multiple other patients throughout the United States had been infected with TB from its FiberCel™ Viable Bone Matrix, Aziyo issued a recall of all VBMs in Lot Number NMDS 210011, the same Lot from which plaintiff became infected. Meanwhile, the Center for Disease Control (CDC) had received multiple reports of TB coming from

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other FiberCel™ Viable Bone Matrix products and had begun its own investigation of these cases.

8.

Between when Aziyo manufactured the FiberCel™ Viable Bone Matrix and when Dr. Uschold positioned it in plaintiff on March 17, 2021, the VBM remained in the same condition as when manufactured. The VBM was in a "defective condition unreasonably dangerous to the user or consumer," as defined by ORS 30.920, because it was infected with TB bacteria.

9.

Aziyo is strictly liable under ORS 90.900 *et seq* because:

a. it failed to design, inspect, test, and manufacture its product so that it would not be tainted with TB bacteria, and

b. because it failed to warn doctors and patients that the product was infected with TB bacteria.

10.

The Medtronic defendants are also strictly liable under ORS 90.900 *et seq* because:

a. they distributed or sold Aziyo's defective product, and

b. they also failed to warn doctors and patients that the product was infected with TB bacteria.

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11.

Under Oregon's strict product liability laws defendants are legally responsible for plaintiff's TB infections. As a result of those infections, plaintiff has endured enormous suffering and pain and has been severely limited in her normal and usual activities. It is also likely she will continue to endure such suffering and pain and will continue to be so limited in her activities. She also has a reduced life expectancy, a reduced quality of life, and a reduced likelihood of qualifying for any goods or services that require proof of good health as pre-qualifications. She also has an increased susceptibility to airborne diseases. For all these losses plaintiff should be fully and fairly compensated in noneconomic damages in a sum not to exceed $5 million.

12.

As a further result of the manufacture and distribution of the FiberCel™ Viable Bone Matrix defective product, plaintiff has incurred medical expenses of $845,971.99. She will need ongoing medical monitoring and she is likely to incur future medical expenses, given her continuing risk for reinfection. It is estimated her future medical expenses, including medical monitoring, will not exceed $3 million.

13.

In addition, plaintiff has lost wages and will suffer an impairment of her future earning capacity in a combined amount unlikely to exceed $800,000.

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Wherefore, plaintiff prays for judgment against defendant for:

a. noneconomic damages not to exceed $5 million,

b. past and future medical expenses, including medical monitoring, not to exceed $3,845,971.99, and

c. past lost wages and the impairment of her future earning capacity not to exceed a combined total of $800,000.

Plaintiff prays also for costs and disbursements incurred herein.

DATED this 7th day of December 2021.

ANDERSEN MORSE & LINTHORST, PC

By /s/ Kelly L. Andersen

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